

**ENTERED**

June 13, 2017

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

ARTEMIO GARCIA JR.  
Movant

VS.

UNITED STATES OF AMERICA  
Respondent

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CIVIL ACTION NO. 7-14-499

CRIMINAL NO. 7-12-1410-1

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Pending before the Court is Movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, which motion had been referred to the Magistrate Court for a report and recommendation. On May 16, 2017, the Magistrate Court issued the Report and Recommendation, recommending that Respondent's Motion to Dismiss be granted and that Movant's section 2255 Motion be dismissed with prejudice, and that a Certificate of Appealability be denied upon the issuance of this Court's final order.

Movant filed a response, which the Court has carefully reviewed. The response requests that the Court strike certain claims and seeks to add certain other claims. As noted in the Report and Recommendation, Movant filed two separate § 2255 motions and also several motions to amend, all of which were considered by the Magistrate Judge. The time for bringing new claims has long since expired and no reason is presented for the late filing. In any event, the proposed new claims are not in fact new claims at all; they are simply more arguments on the same claims. The response does not include any specific objections to the Report and Recommendation thus the Court disregards it.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.<sup>1</sup> Finding no clear error, the Court adopts the Report and

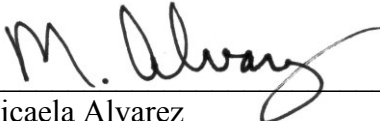
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<sup>1</sup>As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Douglas v. United Services

Recommendation in its entirety. Accordingly, it is hereby **ORDERED** that Respondent's Motion to Dismiss (Dkt. Entry No. 4) is **GRANTED** and that Movant's section 2255 is **DISMISSED** with prejudice. A Certificate of Appealability is **DENIED**.

**IT IS SO ORDERED.**

**DONE at McAllen, Texas, this 13th day of June, 2017.**

  
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Micaela Alvarez  
United States District Judge

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Auto. Ass'n, 79 F.3d 1415, 1420 (5th Cir. 1996)(quoting Fed. R. Civ. P.72(b) advisory committee's note (1983)) *superseded by statute on other grounds* by 28 U.S.C. § 636(b)(1), as stated in ACS Recovery Servs., Inc v. Griffin, No. 11-40446, 2012 WL 1071216, at \*7 n.5 (5th Cir. April 2, 2012).